

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**BRUNSON ROBERTS
ADC #127841**

PLAINTIFF

NO. 3:20-cv-00391-KGB-ERE

DEXTER PAYNE, *et al.*

DEFENDANTS

ORDER

Defendants have filed a motion to dismiss this lawsuit, explaining that Plaintiff Brunson Roberts has not provided discovery responses, failed to timely propound discovery on Defendants, and has refused to participate in his scheduled deposition on December 20, 2021.¹ *Doc. 82.*

Mr. Roberts filed this lawsuit *pro se* under 42 U.S.C. § 1983 and is proceeding with retaliation and corrective-inaction claims.² In the initial order Mr. Roberts was

¹ On November 15, 2021, the Court set December 26, 2021 as the discovery deadline. *Doc. 75.* Defendants assert that the first set of interrogatories Mr. Roberts sent to Defendants did not provide Defendants the allotted 30 days to respond and, were therefore not properly propounded. *Doc. 82.*

² Mr. Roberts is proceeding on claims that: (1) Defendants Raylina Ramsey, Zackery Harmon, Clinton Baker, Nicholas Wilson, Jasmina Morton, and Joe Page retaliated against him from September to October of 2020 at the Grimes Unit for filing a grievance alleging that Arkansas Division of Correction (ADC) officials failed to protect him in May of 2020; and (2) Defendants Dexter Payne, Lewis Young, and Joe Page failed to take any corrective action regarding the alleged retaliation. *Docs. 2, 6, 8.* Specifically, Mr. Roberts alleges that Defendant Ramsey placed Mr. Roberts in a substance abuse program and moved him from barracks to barracks; Defendant Harmon placed Mr. Roberts in punitive isolation; Defendant Page placed Mr. Roberts in a barracks with violent inmates; and Defendants Baker, Wilson, Morton, and Page falsified disciplinary charges against Mr. Roberts after he was attacked on October 26, 2020. *Docs. 2, 6.*

made aware that pursuant to Local Rule 5.5 (c)(2) he is required to diligently prosecute his lawsuit. *Doc.* 3. When a plaintiff willfully refuses to participate in discovery, dismissal is an available remedy. FED. R. CIV. P. 41(b); *Aziz v. Wright*, 34 F.3d 587 (8th Cir. 1994) (dismissed case under 41(b) when plaintiff willfully disregarded court's order allowing defendants to depose him); *Setzke v. Whitmill*, 241 F. App'x 351 (8th Cir. 2007) (unpublished) (no abuse of discretion when court dismissed case after plaintiff failed to appear for two scheduled depositions); *Poole v. Stubblefield*, 216 F. App'x 607, 608 (8th Cir. 2007).

IT IS THEREFORE ORDERED THAT: Plaintiff Brunson Roberts has 14 days to respond to the Defendants' motion to dismiss. His failure to respond will likely result in the dismissal of this lawsuit.

IT IS SO ORDERED this 18th day of January, 2022.



UNITED STATES MAGISTRATE JUDGE